GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Infrastructure & Investment Department- Development of Greenfield Field Port at Gangavaram by Gangavaram Port Ltd(GPL) through Concession Agreement dated 7-8-2003 - Purchase of Shares by M/s Adani Ports & Special Economic Zone (APSEZ) from Shareholders of GPL - Orders - Issued.

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INFRASTRUCTURE & INVESTMENT (PORTS) DEPARTMENT

G.O.MS.No. 4 Dated: 25-05-2021.

Read the following:

1) Concession Agreement (CA) & Share Holders Agreement (SHA) signed between GoAP and M/s GPL Dt 7-8-2003.
2) Letter dated 26.03.2021 along with enclosures received from the Chief Financial Officer, Adani Ports & Special Economic Zone Limited.
3) From the Chief Executive Officer, APMB, Letter No.52/APMB/2021, dated 28.04.2021

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ORDER:

GANGAVARAM a Greenfield Port with deep draft is strategically situated at a distance of 15 kms South of Visakhapatnam Port. Government have declared Gangavaram as Minor Port Vide G.O.Ms.No.288, TR&B (Ports) Department dated 10th November, 1994, and Notified the Port Limits. Government also extended the Port limits in G.O.Ms.No.87, TR&B (Ports) Department dated 4th June, 2001, to cover the project area.

2. Government decided to develop Gangavaram Port under PPP mode. Through competitive bid process, M/s D.V.S Raju led consortium was selected as successful bidder who have incorporated Special Purpose Company called Gangavaram Port Ltd (GPL) for taking up the development of the Port project. GoAP signed concession agreement with GPL on 7-8-2003 for a concession period of 30 years from COD extendable by two spells of 10 years each subject to fulfillment of certain conditions by the Concessionaire. Shareholders Agreement was entered into by GoAP and other share holders on 7-8-2003.

3. GoAP provided 1800 acres of land to the project valued at Rs. 54 crs treating it as Govt investment towards 10.4% equity in the GPL. The Status of shareholding details of Gangavaram Port Limited on date is as follows:

Sl.No.	Name of the Shareholder	Percentage
1	Mr. D.V.S. Raju and family (promoters)	**58.10%**
2	Windy Lakeside Investment Ltd. (an affiliate of Warburg Pincus)	**31.50%**

3	Government of Andhra Pradesh	**10.40%**
	Total Shareholding	**100.00%**

4. After completion of Phase-I project, GPL commenced Port operations from (COD) on 17-4-2009. GPL has developed 9 deep draft berths so far capable of receiving 200000 DWT ships. The developer has been paying 2.1% Revenue share to Govt annually out of gross income of GPL and also paying dividends during last few years. Revenues received by GoAP from GPL are indicated hereunder

(Rs. In crores)

Sl.No.	Revenues received towards	Rs. Crs
1.	Lease rentals on total extent of Ac.1086.46 acres	11.14
2.	2.1% Revenue Share (from 2009-10 till date)	183.56
3.	Dividends towards 10.4% equity share (from 2016-17 till date)	83.27
	TOTAL	277.97

5. In the reference 3rd read above, the CEO, APMB has submitted that M/s. APSEZ have represented on 03-03-2021 that, they entered into definitive agreement for purchase of 31.50% stake (162,855,000 shares) in GPL held by Windy Lakeside Investments Limited at a consideration of INR 120/share. To comply with the provisions of the Shareholders' Agreement (Clause 10.4), APSEZ has submitted '**Deed of Adherence**' on 19-3-2021 to GoAP, which has been accepted by the promoter and Windy Lakeside, for acceptance of GoAP, the other shareholder in Gangavaram Port Limited. The deed of Adherence executed by APSEZ, Windy Lakeside and the promoter is as per the schedule 2B of the Shareholding Agreement.

6. Further, on 23-03-2021 APSEZ stated that they entered into a definitive agreement with Sri D.V.S. Raju and family to acquire their 58.10% stake (300,413,300 shares) in GPL for INR 120/share. The transaction entails a merger of GPL with APSEZ wherein Shri D.V.S. Raju and family will receive shares of APSEZ as per the Merger Cooperation Agreement. The rationale for the proposed merger, *inter alia*, is to increase efficiencies and align business synergies which would result in enhancement of shareholder value, operational efficiencies, and greater focus.

7. He further stated that APSEZ is requesting to consider their proposal to sell GoAP's stake 10.40% (5,37,31,700) in Gangavaram Port Limited at a price of INR 120/share transacting for consideration of INR 645.1 crore **OR** receive shares in APSEZ worth INR 645.1 crore because of proposed merger between GPL and APSEZ.

8. In the light of the above, CEO, APMB has requested the Government that the proposal of M/s. APSEZ may be accepted for acquiring the shares of Windy Lakeside Investment Ltd. (31.50% shares), since the same is in consonance with the conditions of the Concession/Shareholders Agreements (legal opinion obtained confirms the same), firstly because it is after the lock-in period of 5 years from the

COD, and secondly, they have submitted Deed of Adherence in accordance with Schedule 2B as contemplated under Clause 10.4 of the Shareholders Agreement dated 7-8-2003.

9. In so far as the Merger Cooperation Agreement as proposed by APSEZ is not explicitly envisaged under the Concession Agreement or the Shareholders Agreement. The Shareholders Agreement envisages only Deed of Adherence as in Schedule 2B in case of transfer of shares to a third party in terms of Clause 10.4 thereof. As seen from the contents of the Merger Cooperation Agreement, the rationale for the proposed merger, inter alia, is to increase efficiencies and align business synergies which would result in enhancement of shareholder value, operational efficiencies, and greater focus. However, the Concession Agreement creates no legal bar/prohibition that may in any way prevent any such likely merger of GPL with APSEZ (legal opinion also confirms the same). However, this requires consent under Clause 8.4 of the Shareholders Agreement from the GoAP, which APSEZ is seeking the consent of the State in the instant case.

10. In this regard, the CEO, APMB has opined on the basis of legal opinions obtained that the merger is possible if the interests of GoAP pertaining to shareholding, revenue share etc. are protected through another SPC that will fulfill the obligations of the original concession agreement in toto.

11. The CEO, APMB has submitted that the request of M/s. APSEZ of selling the shares held by GoAP in Gangavaram Port Limited is a policy decision to be taken by the Government in the backdrop of the above submissions. However if the decision of the Government is in the affirmative, then it is to be decided whether the stakes of GoAP may be sold for consideration of Rs.645.1 crores @ Rs.120/- share **OR** whether GoAP also should opt for merger with APSEZ at the relative share value and at the same rate as allowed to the promoter, Sri D.V.S. Raju, since the value arrived at for the shares of GPL is at the same rate i.e., Rs.120/- and proper due diligence of APSEZ credentials is undertaken and security clearance obtained and also take a policy decision whether GoAP would like to own shares in a company that does businesses all over the country and overseas too.

12. The CEO, APMB has reported that, he engaged the services of SBI Capital Markets Ltd. (SBICAP) for evaluating the proposals of APSEZ and the SBICAP recommended that the GoAP should go in for disinvestment as per the guidelines of disinvestment policy of GoI for a better price discovery and negotiations. The CEO further reported that the SBICAP has made it clear that the disinvestment by way of direct sale is the best option available for the State.

13. The Chief Executive Officer, APMB has finally recommended as follows:

a. The Government may accept the transfer of shares of 31.50% from Windi Lakeside Investment Ltd. (an affiliate of Warburg Pincus) in Gangavaram Port Limited in favour of APSEZ and acknowledge the Deed of Adherence.
b. The Government may approve the definitive agreement entered between APSEZ and Sri D.V.S. Raju and family to acquire their 58.10% of the shares in GPL.

c. The Government may consider the recommendation of SBICAP on disinvestment.
d. The Government may accept the proposal of merger of GPL with APSEZ with a condition that the transferee company APSEZ shall set up a separate SPC to enter into a revised concession agreement as per the same terms and conditions of the original Concession agreement for the remaining concession period.
e. An Empowered Group of Secretaries may be constituted to implement the entire process of disinvestment and merger duly following the available guidelines in this regard

14. The Finance Department have advised to write comprehensive terms of reference for the Empowered Group of Secretaries to ensure that the interests of the Government are protected in the Gangavaram Port Project, including but not limited to the following:

a. the Committee may ensure that all the conditions in the present Concession Agreement and Shareholders Agreement are continued without any dilution;
b. the payment obligations to the Government are protected without any interruption;
c. the assets in the project are protected;
d. the rights and interests of the Government in the project are protected;
e. the obligations of the Concessionaire in the project are ensured to be fulfilled;
f. the project is transferred to the Government at the end of the Concession Period;
g. The entire process of disinvestment, merger and formation of separate SPC may be completed within a stipulated time frame, beyond which the Government should have a step in right and substitute a new concessionaire in the SPV.

15. The Government have examined the recommendations of the CEO, APMB along with the legal opinions obtained in the matter, in depth, which clearly mentioned that the Merger of Gangavaram Port Ltd with APSEZ is possible by duly following the process including incorporation of a fresh Special Purpose Company. The Government while considering the recommendations of SBICAP, have decided that the entire process of disinvestment and merger may be implemented through an Empowered Group of Secretaries duly following the available guidelines in this regard and the advice of the Finance department as mentioned above.

16. Therefore the Government hereby order that:

a. The State Government hereby accept the transfer of shares of 31.50% from Windi Lakeside Investment Ltd. (an affiliate of Warburg Pincus) in Gangavaram Port Limited in favour of APSEZ and acknowledge the Deed of Adherence entered into between APSEZ and the Promoters of Gangavaram Port Ltd. (GPL).
b. The State Government hereby approve the definitive agreement entered between APSEZ and Sri D.V.S. Raju and family to acquire their 58.10% of the shares in GPL.

c. The State Government hereby accept the proposal of merger of GPL with APSEZ with a condition that the transferee company APSEZ shall set up a separate Special Purpose Company (SPC) to enter into a revised concession agreement on the same terms and conditions of the original concession agreement for the remaining concession period.
d. The Government hereby order to constitute an Empowered Group of Secretaries to implement the entire process of disinvestment and merger duly following the available guidelines and the recommendations of SBICAP on disinvestment.

17. Separate orders will be issued constituting the Empowered Group of Secretaries.

18. The Chief Executive Officer, APMB shall take all necessary further action in the matter accordingly.

19. This order issues with the concurrence of Finance Department, vide their U.O.No. FIN01-FMU0ASD(IIE)/8/2021-FMU-IIEIC, dated 25.05.2021.

(BY ORDER AND IN THE NAME OF GOVERNOR OF ANDHRA PRADESH)

R.KARIKAL VALAVEN
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The Chief Executive Officer, APMB, Kakinada.
M/s. Chief Financial Officer, Adani Ports & Special Economic Zone Limited, through the CEO, APMB, Kakinada
The Chief Executive Officer, Gangavaram Port Limited, Visakhapatnam.
The Port Officer, Kakinada
Copy to:
The OSD to Secretary to Hon'ble CM
The OSD to Hon'ble M(I&I)
The Finance (Exp.FMU-IIEIC) Department (w.r.t Computer No.1404375)
The GA(Cabinet) Dept.,
The V.C&MD, APIIC.
The PS to Spl.C.S., I&I Department.
Sf/sc(INI01-PORT/36/2021)

//FORWARDED :: BY ORDER//

SECTION OFFICER